

Notice of Allowability

Application No.

10/632,402

Examiner

Jeffrey R. Swearingen

Applicant(s)

KARP, ALAN H.

Art Unit

2145

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to remarks filed 2/27/2008.
2. ☒ The allowed claim(s) is/are 1-9 and 34.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- * Certified copies not received: ____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date ____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>20080316</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date ____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other ____. |

EXAMINER'S AMENDMENT

Election/Restrictions

1. Claims 19-33 and 36-39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 2/27/2008.

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-9 and 34, drawn to sending a message in an email system, classified in class 709, subclass 206.

II. Claims 10-18 and 35, drawn to identifying a recipient address and terminating the connection, classified in class 709, subclass 227.

3. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the delaying system of claims 1 and 34 does not require identification of the recipient address. The subcombination has separate utility such as verification of the existence of a valid email address.

The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

4. During a telephone conversation with Philip Lyren on 3/6/2008 a provisional election was made without traverse to prosecute the invention of I, claims 1-9 and 34. Affirmation of this election must be

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made by applicant in replying to this Office action. Claims 10-18 and 35 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Philip Lyren on 3/6/2008.

The application has been amended as follows:

Claims 10-18. (canceled)

Claim 34. A system for increasing message transaction costs to minimize junk or spam emails, comprising a:

sending computer;

a relaying computer;

means for receiving at a relaying computer over a data link a request from a sending computer to route a message to a recipient address;

means for calculating a delay period, in response to the request;

means for sending a command from the relaying computer to the sending computer, the command causing the sending computer to re-queue the message for re-transmission of the message to the relaying computer;

means for dropping the data link;

means for receiving over the data link, if the next request was received during the delay period;

and

means for routing the message referenced in the next request to the recipient address, if the delay period has expired.

Claim 35. (canceled)

6. The following is an examiner's statement of reasons for allowance:

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7. Several methods of preventing or limiting spam are known in the prior art. Barrett et al. (US 7,032,023) discloses preventing a user from transmitting future messages based on the number of times the user transmits messages in a time period. Wallace et al. (US 7,171,450) deals with filtering email before delivery. These are two of the more common types of spam prevention: filtering and prevention of transmission. Applicant's invention is a modified version of a prevention system.

8. The novelty of Applicant's invention is as follows: Applicant requests to transmit a message. Applicant's connection for transmitting the message is severed. Applicant will wait a random delay time period and retransmit the request. If Applicant requests a second time outside of the random delay time, Applicant may transmit the message to its recipient.

9. Applicant's invention is distinguished over Barrett. Barrett counts a number of electronic communications during a period of time, whereas Applicant deals with retransmission based on a delay window. Barrett does not simply cancel the request upon the first receipt of the request, unlike Applicant. Applicant's invention essentially requests to send a message, and the server stops the request and requires Applicant to request a second time without requiring the server to be busy. Any message Applicant wishes to transmit must be requested twice for transmission with a random time separating the two requests, and only then may Applicant transmit the message to the recipient. This is distinguished over the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Barrett et al. US 7,032,023

Wallace et al. US 7,171,450

Allman, Eric. "Spam, Spam, Spam, Spam, Spam, the FTC, and Spam" Queue. Volume 1, Issue 6. September 2003. ACM Press. 62-69.

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Berghel, Hal. "Email-the good, the bad, and the ugly." Communications of the ACM. Volume 40, Issue 4. April 1997. ACM Press. 11-15.

Weinstein, Lauren. "Spam wars." Communications of the ACM. Volume 46, Issue 8. ACM Press. August 2003. 136.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571)272-3921. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeffrey R. Swearingen
Examiner
Art Unit 2145

/Jeffrey R. Swearingen/
Examiner, Art Unit 2145

/Jason D Cardone/
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